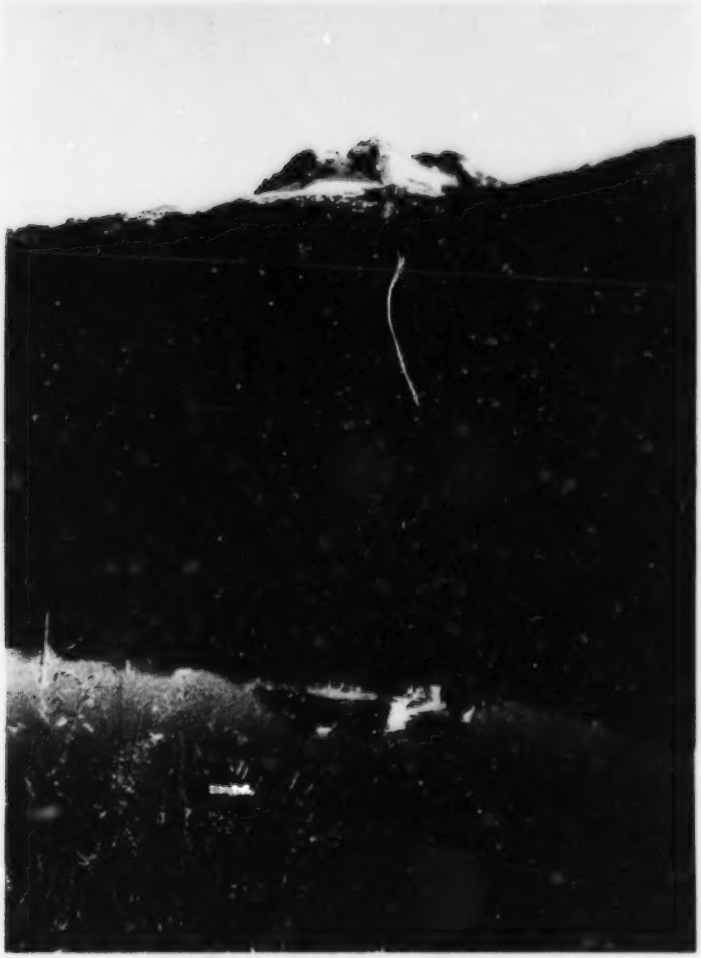
First Nations Water Rights in British Columbia

A Historical Summary of the rights of the Homalco First Nation



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MINISTRY OF ENVIRONMENT, LANDS and PARKS
WATER MANAGEMENT BRANCH

FIRST NATIONS WATER RIGHTS IN BRITISH COLUMBIA:

A Historical Summary of the rights of the Homalco First Nation

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The sheer numbers of First Nations groups' with histories of water rights made the completion of the Report Series seem, at times, prolonged. The determination, patience and vision of the partners was essential in the completion of the Series and is gratefully acknowledged.

Gary Robinson
Project Manager
Water Management Branch

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FIRST NATIONS WATER RIGHTS REPORT

BAND: Homalco Band

ADDRESS: P.O. Box 789, Campbell River, B.C., V9W 6Y4

CHIEF: Richard Harry

PHONE: 287-4922 **FAX:** 287-9590

AFFILIATION: Alliance Tribal Council

LOCATION:

The Homalco Band occupy 623.8 hectares in reserve lands on the shores of Bute Inlet northeast of the Campbell River District. The reserves include:

Aupe 6	Aupe 6A	Bartlett Island 7
Bear Bay 8	Homalco 1	Homalco 2
Homalco 2A	Mushkin 5	Mushkin 5A
Orford Bay 4	Potato Point 3	

On the eleven Homalco Reserves, water rights have been licensed on:

- Homalco (Aupe) 6 - a 5.7 hectare reserve located on the mainland adjacent to Calm Channel.
- Homalco (Aupe) 6A - a 8.1 hectare reserve bordering Aupe 6.
- Orford Bay 4 - a 271.7 hectare reserve located on the shores of Orford Bay, east of Bute Inlet.

The most recent population figures compiled by the Ministry of Finance report that the Homalco Band has a population of 133 persons living on-reserve, 218 persons living off-reserve, for a total of 351 registered persons.

The eleven reserves of the Homalco Band occur in the Coastal Western Hemlock Biogeoclimatic Zone. Western Hemlock and amabilis fir are the dominant trees species in the area, although many other species are common. The Homalco Reserves lie at elevations ranging from sea level to 400 feet above mean sea level, and experience a climate in which average daily temperatures range from lows of -5 degrees centigrade in January, to highs of 20 degrees centigrade, in July. Average rainfall totals for the area range between 100 and 250 centimeters annually.

Water courses of significance include:

- Aupe Creek - flows southwest through Reserve No.'s 6 and 6A, and discharges into Calm Channel.

- Dupont Creek - flows north through Orford Bay Reserve No. 4 before draining into Orford River.

WATER ALLOCATIONS:

There are no records of water allocations made by either the Indian Reserve Commission, by the Lieutenant Governor-in-Council (by Order-in-Council), or by Order of the Board of Investigation.

The water rights of the Homalco Band have been determined by two actions of government over the years:

1) The granting of water licenses in response to Federal Government applications requesting authorization for the use water on reserve lands.

2.) Actions to amend, cancel or record as abandoned, licensed rights, pursuant to provisions in the *Water Act*.

HISTORY, CURRENT STATUS AND NOTES:

The history of water rights, the current status of rights, and notes for the Homalco Band with respect to Aupe Creek and Dupont River are as follows:

Aupe Creek

History:

May 25, 1923 In accordance with an application made by the Department of Indian Affairs on behalf of the Homalco Band, the Comptroller of Water Rights issued Conditional Water License 6961. The license was given a precedence date of February 6, 1923 and authorizes the diversion of 12,000 gallons a day, year round, from Aupe Creek for domestic purposes. The appurtenant lands are specified as Homalco (Aupe) Reserve No. 6.

Dec 18, 1925 Based on the extent that rights granted under the former license (CL 6961) were exercised, the Comptroller of Water Rights issued Final Water License 4982 (in substitution of Conditional Water License 6961), on behalf of the Homalco Band. The license has a date of precedence of February 6, 1923 and authorizes the diversion of 12,000 gailons a day, year round, from Aupe Creek, for domestic purposes on Homalco Reserve No. 6.

Feb 27, 1987 In accordance with an application made by the Department of Indian Affairs on behalf of the Homalco Band, the Regional Water Manager issued Conditional Water License 65224. The license has a precedence date of February 28, 1986 and authorizes diversion of 165,000 gallons a day, year round from Aupe Creek for industrial (hatchery) purposes. The appurtenant lands are defined as Homalco (Aupe) Reserve No. 6 and 6A.

Jan 27, 1989 A letter from the manager of Golden Salmon Farms Ltd. stated that the Company was concerned that the proposed logging on Lot 1835 (which contains Conditional Water License 65224) would have a detrimental impact on their fish inventory. The Homalco Band also voiced concerns regarding the effects of timber harvesting on the quality and quantity of their water supply.

Jun 30, 1989 A letter from Water Management stated that possible negative impacts to the quantity and quality of the water, as well as to the fish hatchery operation, could potentially be initiated by logging on Lot 1835. Therefore, it was agreed that a Crown Lease on Aupe Reserve No. 6 be refused.

Further information regarding the suggestion made by Water Management is not available on file.

Current Status:

Final Water License 4982 and Conditional Water License 65224, both held by the Homalco Band, are the only active licenses on Aupe Creek.

The Water Survey of Canada has no records of streamflow on Aupe Creek and no other current sources of information regarding water availability were found.

Notes

1. Under current licensing practices Final Water License 4982 would be issued for waterworks purpose. The amendment of Final License 4982 to waterworks purpose, would qualify the Aupe Creek drainage area as a 'Community Watershed' under provisions contained in the Forest Practices Code.

Dupont Creek

History:

Jun 15, 1993 In accordance with an application made by the Department of Fisheries and Oceans, the Regional Water Manager issued Conditional Water License 104960. The license has a precedence date of May 13, 1992 and authorizes the diversion of 5 cubic feet per second from Dupont Creek for conservation (spawning channel) purposes. The appurtenant lands are specified as Orford Reserve No. 4, Range 1, Coast District.

Current Status:

Conditional Water License 104960, held by the Department of Fisheries and Oceans, is the only active license on Dupont Creek. This licensee currently leases land from the Homalco Band.

The Water Survey of Canada has no records of streamflow on Dupont Creek and no other current information sources on water availability in Dupont Creek have been found.

Notes:

1. There is no additional information with respect to the rights of the Homalco Band on Dupont Creek.

OTHER INFORMATION:

Groundwater Records:

A review of well records maintained by the MELP - Groundwater Section found that no wells have been reported on either Homalco Reserve No. 6, or on Homalco Reserve No. 6A.

As the provision of information to the Groundwater Section is voluntary, this review should not be assumed to be complete.

Alternate Water Sources:

Currently, the potential for water supply from a municipality is limited as there are no municipal water systems in the proximity of the Homalco Reserves.

ATTACHMENT 1

Summary of Water Records

Homalco First Nation

Water Source	Priority Date	Reserve Name	File No.	Document Type	Status	Superceded By	License PUC/MOD & OIC Allotments	Comments
Aupe Creek	1923/02/06	Aupe 1 (Homalco 6)	0045490	CL 6961	Superceded	FL 4982	12,000 GAD/Domestic	
Aupe Creek	1923/02/06	Homalco (Aupe) 6	0045490	FL 4982	Current		12,000 GAD/Domestic	FL 4982: **Priority 1 - Aupe Creek.** Aupe Cr. Drainage Area: Potential designation **"Community Watershed"**; requires amendment of FL 4982.
Aupe Creek	1986/02/28	Homalco (Aupe) 6 and 6A	2000479	CL 65224	Current		165,000 GAD/Industrial (Hatchery)	CL 65224: **Priority 2 - Aupe Creek.**
Dupont Creek	1992/05/13	Orford Bay 4	2001624	CL 104960	Current		5 CFS/Conservation (spawning channel)	CL 104960: Issued in name of lessee - **'Dept. of Fisheries and Oceans'.**

LEGEND:

Licence Types (Document Types)
CL: Conditional Licence
FL: Final Licence

Mechanisms for Allocation (Document Type)
OIC: Order-in-Council (as issued by the Luitenant Governor in Council)
MOD: Minute of Decision (as recorded under the Indian Reserve Commission)
IRC: Indian Reserve Commission
AGBC: Attorney Generals Office of BC (followed by File #)

Allotment Units (Licence PUC/MOD & OIC Allotments)
GAD: Gallons a day
AF: Acre feet
CFS: Cubic feet per second

ATTACHMENT 2

PROVINCE OF BRITISH COLUMBIA. **WATER RIGHTS BRANCH.** DEPARTMENT OF LANDS.

CONDITIONAL WATER LICENCE.

For Domestic purpose.

Appurtenant to that part of Indian Reserve No. 6, Homalco, on which are situate dwellings and appendages thereto.

WHEREAS The Department of Indian Affairs, as owner or lawful occupant of the land, mine, or undertaking hereinafter specified has applied for a licence to take and use water in the manner hereinafter set out, and has taken all the steps required of such applicant under the "Water Act, 1914," prior to the issue of this licence, and is, under the said Act, entitled thereto:

Now, therefore, in pursuance of the said Act, this conditional licence is issued, granting the licensee hereunder the right to take and use water under the following terms and conditions:—

(a.) The source of the water-supply is Aug Creek a tributary of Cula Channel.

(b.) The point of diversion from the stream is located as shown in the exhibit marked "A" hereto attached, which is incorporated herewith and made a part hereof.

(c.) The date from which this licence and the right to take and use water thereunder shall take precedence is 6th February, 1923.

(d.) The water is to be used for Domestic purpose and incidentally for - - - - - purpose.

(e.) The maximum quantity of water which may be used at the place of use is:—

For Domestic purpose 12,000 gallons a day.

For - - - - - purpose - - - - - and an additional amount may be diverted to provide against reasonable loss by seepage and evaporation in conveyance from the point of diversion to the place of use.

(f.) The period of the year during which the water may be used is the whole year.

(g.) The area and description of the lands or mines upon which the water may be used are that part of Indian Reserve No. 6, Homalco, on which are situate dwellings and appendages thereto.

which area and description are more particularly shown in the said exhibit "A."

(h.) The works which are required to be constructed consist of all the works set out in the exhibit marked "B" hereto attached, which is incorporated herewith and made a part hereof.

File Number 049190 Licence Number 6961

Form 1002, W.R.B.—1,000-11-22—3063. (Conditional Licence—Domestic, Mining, Miscellaneous, etc.)

(i.) The construction of the said works shall be commenced on or before the 1st day of August 1923, and shall be prosecuted with due diligence and in a workmanlike manner and to the satisfaction of the Comptroller of Water Rights.

(j.) The said construction shall be completed and the water beneficially used for the purpose set out in this licence on or before the 1st day of November, 1925

(k.)

(l.) Before any change is made in the said works which would be a material deviation from the plans as approved or the works as accepted by the Comptroller, plans of such proposed change must be filed with the Comptroller and approved by him.

(m.) This licence shall not in any way be deemed to be a final licence for the use of water, but shall have the effect only of a conditional licence issued under Part V. of the "Water Act, 1914," and shall be subject to all the provisions of said Act, including the filing of proof of the completion of the said works and the putting of the water to such beneficial use within the time limited by the provisions of section 117 of the said Act.

Issued this 25th day of May, 1923.

File No. 045490

E. D. Cleveland
Comptroller of Water Rights.

File Number

Licence Number 6961

N.B.—In order that statements of rentals due the Province shall be sent to the proper party, notice of the date of any change in the ownership of the lands, mines, or undertaking specified in this licence should be filed with the Comptroller of Water Rights by the new owner.

Form 1002, W.R.B.—1,000-8-21. (Conditional Licence—Domestic, Mining, Miscellaneous, etc.)

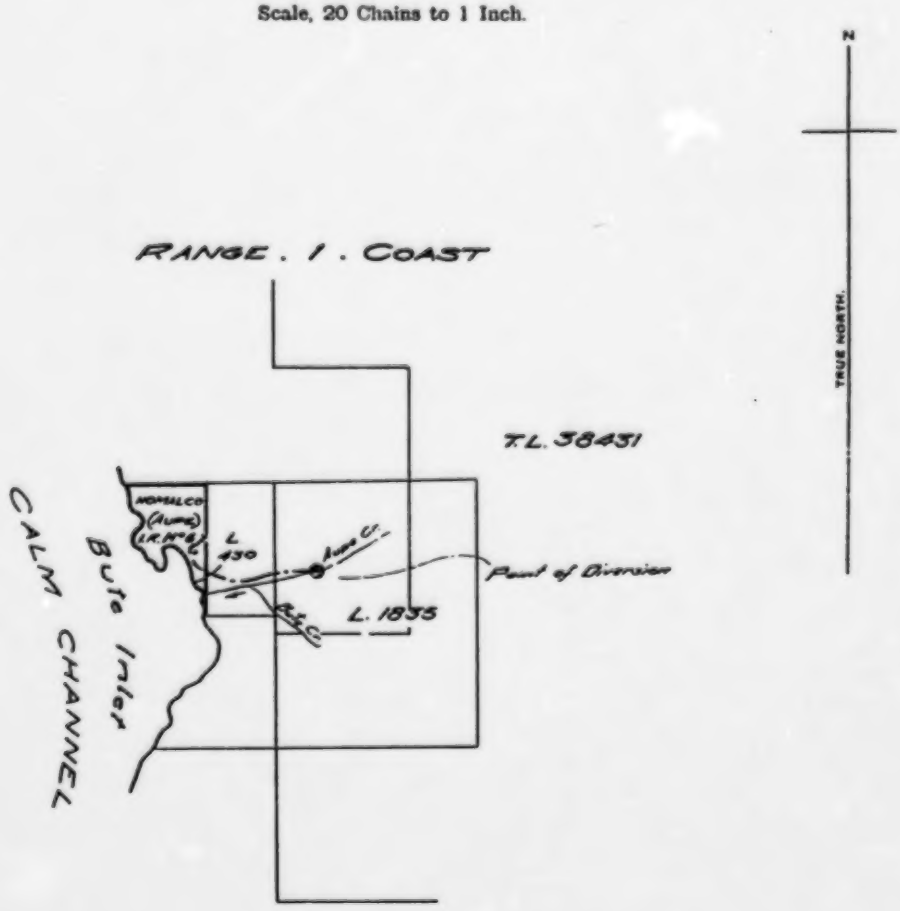
6

British Columbia.

To accompany Conditional Licence No 6961 ..... Precinct.

VANCOUVER WATER DISTRICT.

Scale, 20 Chains to 1 Inch.



The boundaries of the land to which this permit is appurtenant are shown shaded.

Signature E. H. Cleveland

Date 25th May 1923

EXHIBIT "A" Ref. Map 4°(C-7)

(6961)

C.L. 6961.
File 045490.

PROVINCE OF BRITISH COLUMBIA. WATER RIGHTS BRANCH. DEPARTMENT OF LANDS.

EXHIBIT "B."

(APPROVAL OF PLANS AND LIST OF WORKS TO BE CONSTRUCTED.)

The works which are accepted as necessary and suitable for the taking and (or) using of the water under the above-mentioned licence, and which are more fully set out in the plans and specifications filed in the office of the Comptroller of Water Rights numbered 30350 3

as altered, amended, or limited by supplemental plans and specifications numbered

or in letters or other documents referred to as

which plans and specifications as thus altered, amended, or limited are hereby approved, are as follows:—

Diversion dam and line.

File No. 045490

Map No. R.f. 4A

By XMS

J. H. Cleveland

Comptroller of Water Rights.

6961

Form 1008, W.R.B. (Approval of Plans)—2,500-4-22—6911—(Forming part of Conditional Water Licence No.....).

WATER MANAGEMENT BRANCH

MINISTRY OF ENVIRONMENT

THE PROVINCE OF BRITISH COLUMBIA—WATER ACT

CONDITIONAL WATER LICENCE

Department of Indian & Northern Affairs Canada c/o Homalco Indian Band of P.O. Box 789, Campbell River, B.C. V9W 6Y4

is hereby authorized to divert and use water as follows:

(a) The stream on which the rights are granted is Aupe Creek.

(b) The point of diversion is located as shown on the attached plan.

(c) The date from which this licence shall have precedence is 28th February, 1986.

(d) The purpose for which this licence is issued is industrial (hatchery).

(e) The maximum quantity of water which may be diverted is 165,000 gallons a day.

(f) The period of the year during which the water may be used is the whole year.

(g) The land upon which the water is to be used and to which this licence is appurtenant is Indian Reserve No. 6 and 6A, Range 1, Coast Land District.

(h) The works authorized to be constructed are dam, pipe, ditch and hatchery, which shall be located approximately as shown on the attached plan.

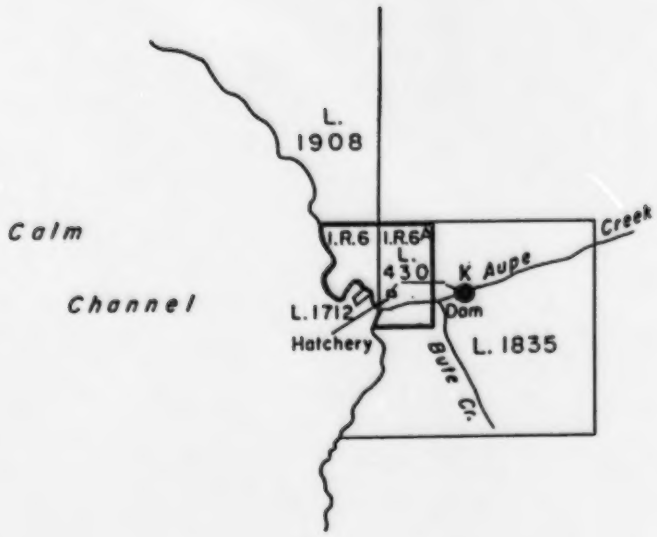
(i) The construction of the said works has been completed and the water is being beneficially used. The licensee shall continue to make a regular beneficial use of water in the manner authorized herein.

J.W. McCracken, P. Eng.
Regional Water Manager

File No. 2000479 Date Issued: 27th February, 1987 Conditional Licence 65224

W-183

Province of British Columbia



N

WATER DISTRICT : VANCOUVER
PRECINCT : JERVIS
LAND DISTRICT : RANGE I COAST

LEGEND

Scale	: 1:20000
Point of Diversion	: ●
Map Number	: WR92-K-035
Pipe	: —— - ——

The boundaries of the land to which this licence is appurtenant are shown thus: ——————

Signature Jas McCrankan

Date 27th February, 1987

C.L. 65224
File 2000479

WATER MANAGEMENT BRANCH

MINISTRY OF ENVIRONMENT

THE PROVINCE OF BRITISH COLUMBIA—WATER ACT

CONDITIONAL WATER LICENCE

Homalco Indian Band is hereby authorized to divert and use water as follows:

(a) The stream on which the rights are granted is **Dupont Creek.**

(b) The point of diversion is located as shown on the attached plan.

(c) The date from which this licence shall have precedence is **13th May, 1992.**

(d) The purpose for which this licence is issued is **conservation (spawning channel).**

(e) The maximum quantity of water which may be diverted is **5 cubic feet per second.**

(f) Water may be used throughout **the whole year.**

(g) The land upon which the water is to be used and to which this licence is appurtenant is **Indian Reserve No. 4 (Homalco Indian Band), Range 1, Coast District.**

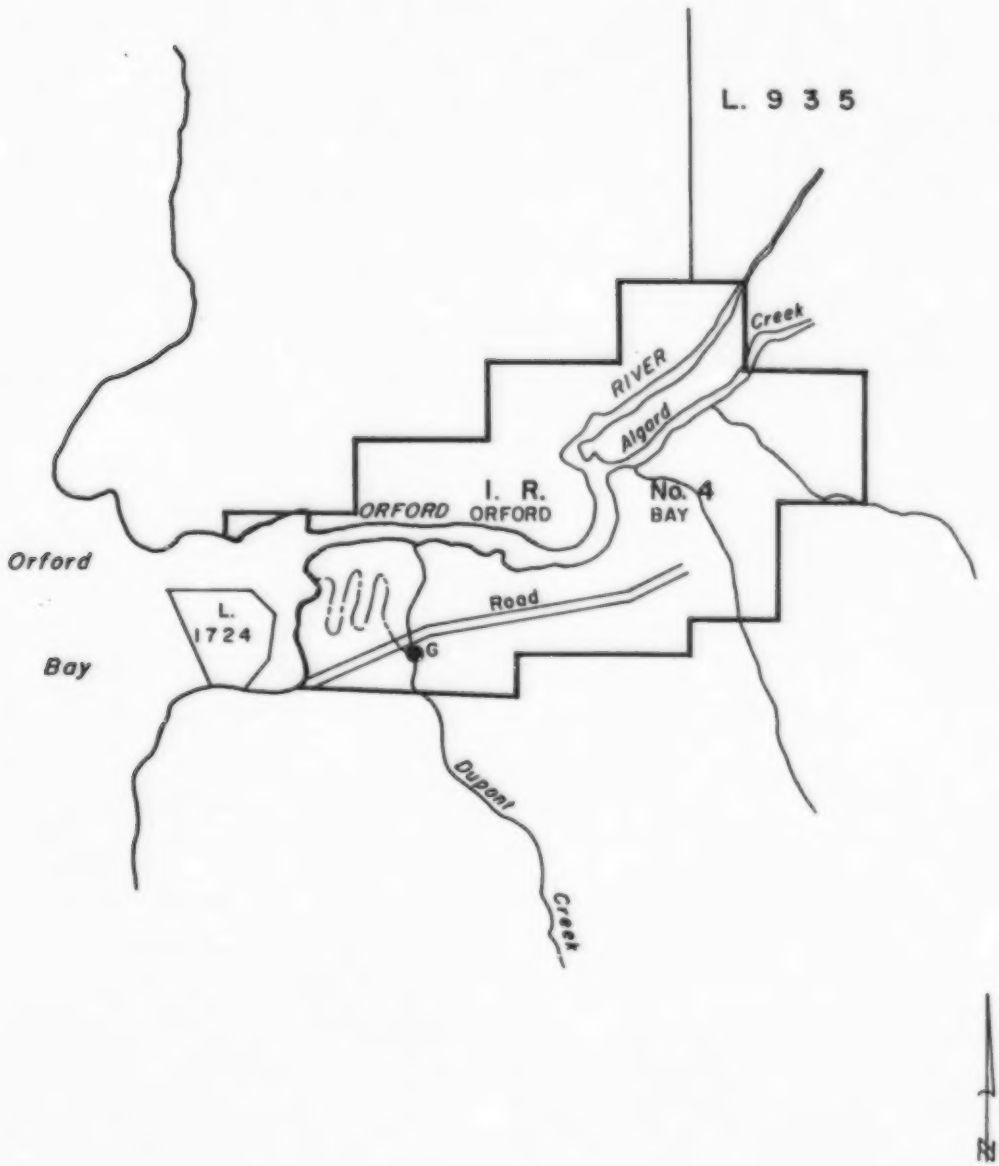
(h) The works authorized to be constructed are **diversion structure, pipe, and spawning channel** which shall be located approximately as shown on the attached plan.

(i) The construction of the said works shall be completed and the water beneficially used prior to **31st December, 1996**. Thereafter, the licensee shall continue to make a regular beneficial use of water in the manner authorized herein.

W.H. Dreher, P. Eng.
Regional Water Manager

File No. **2001624** Date issued: **15th June, 1993** Conditional Licence: **104960**

Province of British Columbia



WATER DISTRICT : VANCOUVER
PRECINCT : JERVIS
LAND DISTRICT : RANGE I COAST

LEGEND

Scale : 1:25 000
Point of Diversion : ●
Map Number : W R 92 K/10(c)
Pipe or Spawning Channel : ——— – ———

Signature W Mulvey

Date 15th June, 1993.

C.L. 104960
File 2001624

The boundaries of the land to which this licence is appurtenant are shown thus: ———————

PROVINCE OF BRITISH COLUMBIA. WATER RIGHTS BRANCH. DEPARTMENT OF LANDS.

FINAL WATER LICENCE.

(DOMESTIC, MINING, MISCELLANEOUS, ETC.).

WHEREAS THE DEPARTMENT OF INDIAN AFFAIRS, whose address is Ottawa, Canada.

is the owner of the land, mine, or undertaking to which Conditional Licence No. 6961 was made appurtenant, and is the applicant for this licence; and

Whereas satisfactory proof has been duly filed and it has been shown to the satisfaction of the Comptroller that the terms of the said conditional licence have been complied with satisfactorily, and particularly that the works for the diversion and carriage of the water under the said licence have been completed and that beneficial use of the water has been made thereunder:

Now, therefore, in pursuance of the "Water Act, ~~1914,~~" this final licence is issued, granting the licensee thereunder the right to take and use water under the following terms and conditions:—

(a.) The source of the water-supply is Aupe Creek, a tributary of Calm Channel.

(b.) The point of diversion from the stream is located as shown in the exhibit marked "A" hereto attached, which is incorporated herewith and made a part hereof, the original of which exhibit is attached to the counterfoil of this licence on file in the office of the Comptroller of Water Rights, Parliament Buildings, Victoria.

(c.) The date from which this licence and the right to take and use water thereunder shall take precedence is 6th February, 1923.

(d.) The purpose for which the water is to be used is Domestic.

(e.) The maximum quantity of water which may be used at the place of use is 12,000 gallons a day; and the maximum quantity of water which may be diverted from the stream is 12,000 gallons a day.

(f.) The period of the year during which the water may be used is the whole year.

(g.) The area and description of the lands or mines upon which the water may be used are that part of Indian Reserve No. 6, Homalco, on which are situate dwellings and appendages thereto.

which area and description are more particularly shown in the said exhibit "A."

File No. 045490.

Licence Number 4982

Form 1031, W.R.B. (Final Licence—Domestic, etc.)—1M-420-S73

ORIGINAL

(h.) The works for the diversion and the carriage of the water consist of dam and pipe.

(i.) Before any change is made in the said works which would be a material deviation from the plans as approved or the works as accepted by the Comptroller, plans of such proposed change must be filed with the Comptroller and approved by him.

(j.) This licence shall be appurtenant to that part of Indian Reserve No. 6, Homalco, on which are situate dwellings and appendages thereto.

(k.) The nature and extent of the incidental use (if any) permitted under this licence are None.
but such use shall not enlarge the quantity of water allowed under item (e) above.

(l.) The terms and conditions of this licence shall replace those of the conditional licence hereinbefore referred to.

(m.)

Issued this 18th day of December, 19.25.
File No. 045490.

E. McCausland
Comptroller of Water Rights.

Map No. 94 4*(D-1)
By ... Fld

Licence Number 4982

Form 1021, W.R.B. (Final Licence—Domestic, etc.)—1M-425-873

ORIGINAL

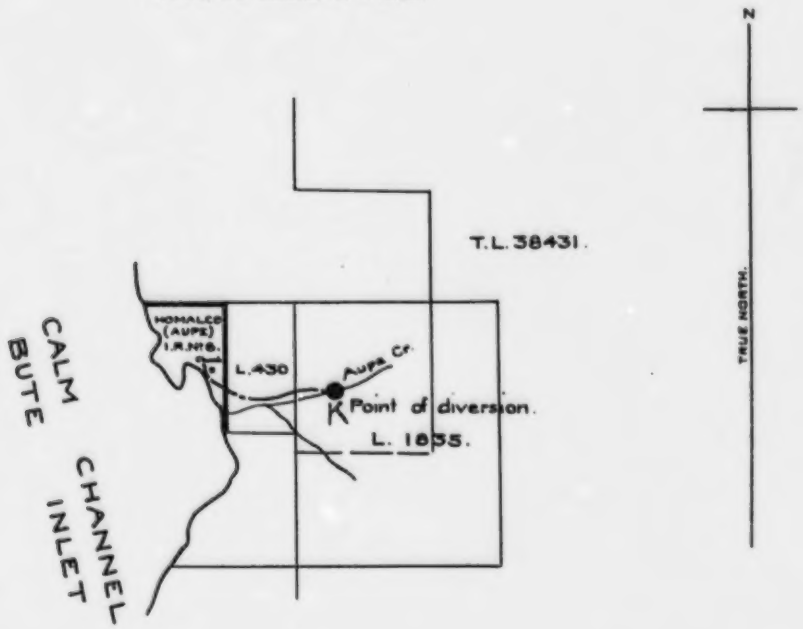
4/1

British Columbia.

To accompany Final Licence No 4982 Precinct.

VANCOUVER WATER DISTRICT.

Scale, 20 Chains to 1 Inch.



RANGE 1. COAST.

JERVIS PRECINCT

Rec'd Chf.

Signature E. H. Cleveland

92 K 035
(93 G/6 E.R.)

EXHIBIT "A" Ref. Map 4 ~~(D-7)~~.
~~92 F/16 (E.)~~

Date. 18 Dec. 1925

F.L. 4982 for C.L. 6961.
File 045490.

ATTACHMENT 3

Stream Register Report Water Licence Information System

Report Requested By : CROCHA
Date Report Requested : 1996/05/16 11:04
Report Sorted By : Source Gazetted - Priority Date - Licence Number
Selection Criteria
START POINT : F031180 - 92.K.035 K
END POINT : S014964 - Aupe Creek on Salt Water

Priority YYYY/MM/DD	Licence Number	File Number	Appurtenancy	Licensee	POD	MEE POD Comments	PUC	Quantity/Units	Term Start	Term End	Licence Comments	Process Status
1923/02/06	P004982	0045490	I R 66 HOMALCO R 1 COAST DIST	HOMALCO INDIAN BAND 987-552-7913 1218 HUTE CRES CAMPBELL RIVER BC V9W1G5			DOM	12,000.00 GD	Jan 01	Dec 31		
	Aupe Creek		MR92.E.035	E	N						28D VAN - JERVIS	
1996/02/28	C065224	2000479	AUPE I R NO 6 & 6A R 1 COAST DIST	HOMALCO INDIAN BAND 987-552-7913 1218 HUTE CRES CAMPBELL RIVER BC V9W1G5			POND	165,000.00 GD	Jan 01	Dec 31	HATCHERY	
	Aupe Creek		MR92.E.035	E	N						28D VAN - JERVIS	

---------- Total of 2 Licences Reported ----------

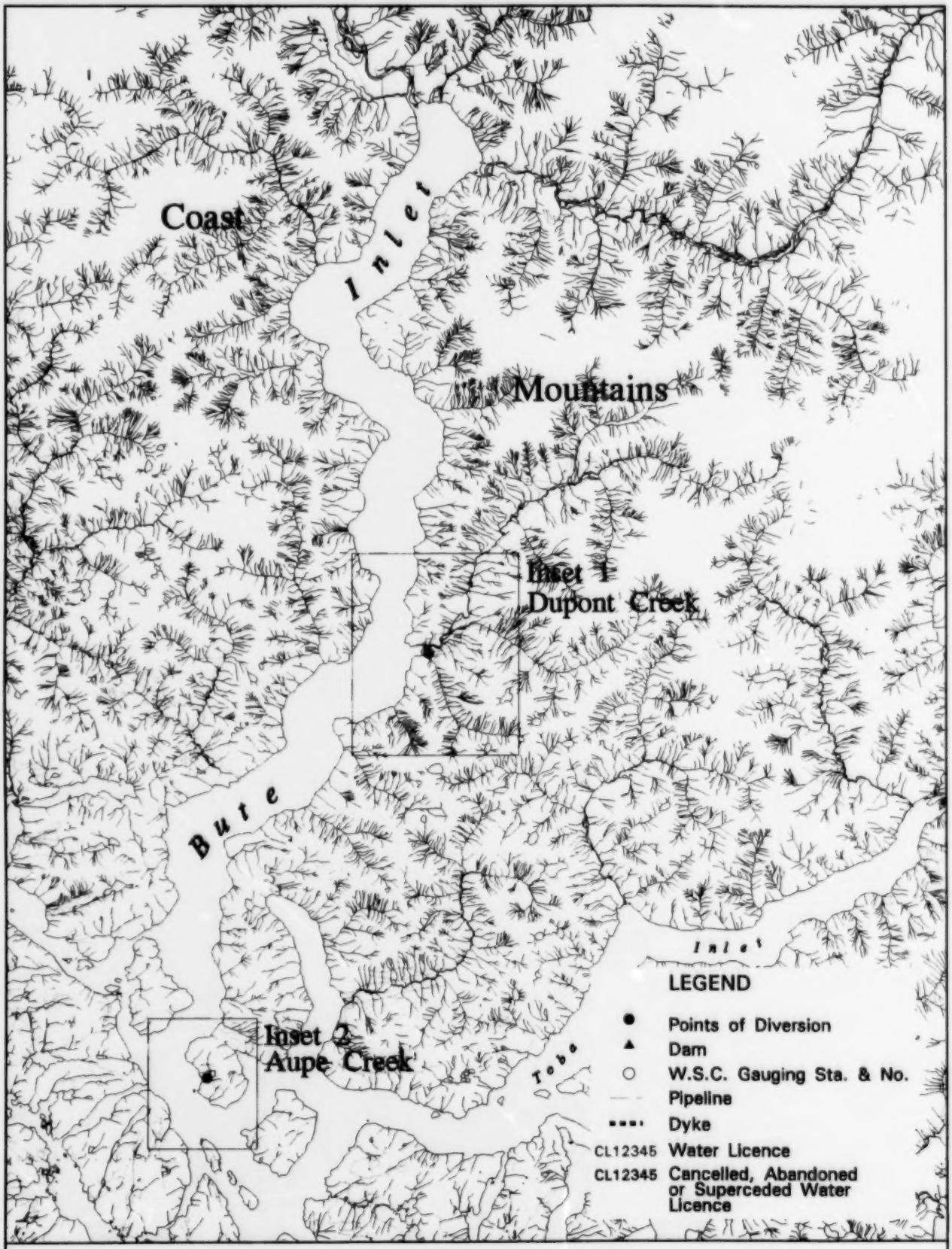
Stream Register Report Water Licence Information System

Report Requested By : CROCHA
Date Report Requested : 1996/11/07 13:56
Report Sorted By : Source Gazetted - Priority Date - Licence Number
Selection Criteria
START POINT : 8064075 - 92E/10(c) G
END POINT : 8064076 - Dupont Creek left of Orford River

Priority YYYY/MM/DD	Licence Number	File Number	Appurtenancy	Licensee	POC	Quantity/Units	Term Start	Term End	Licence Comments	Process Status
Source		WR Map	POD	RED POD Comments					Proc	
1992/05/13	C104660	2001424	INDIAN RESERVE NO 4 DIST	HONALCO R 1 COAST FISHERIES & OCEANS CANADA 400 - 555 W HASTINGS ST VANCOUVER BC V6B5G3	COM38	5.00 CS	Jan 01	Dec 31	SPRAKING CHANNEL	
Dupont Creek		WR92E/10(c)	G	N					29D VAN - JENV18	

---------- Total of 1 Licence Reported ----------

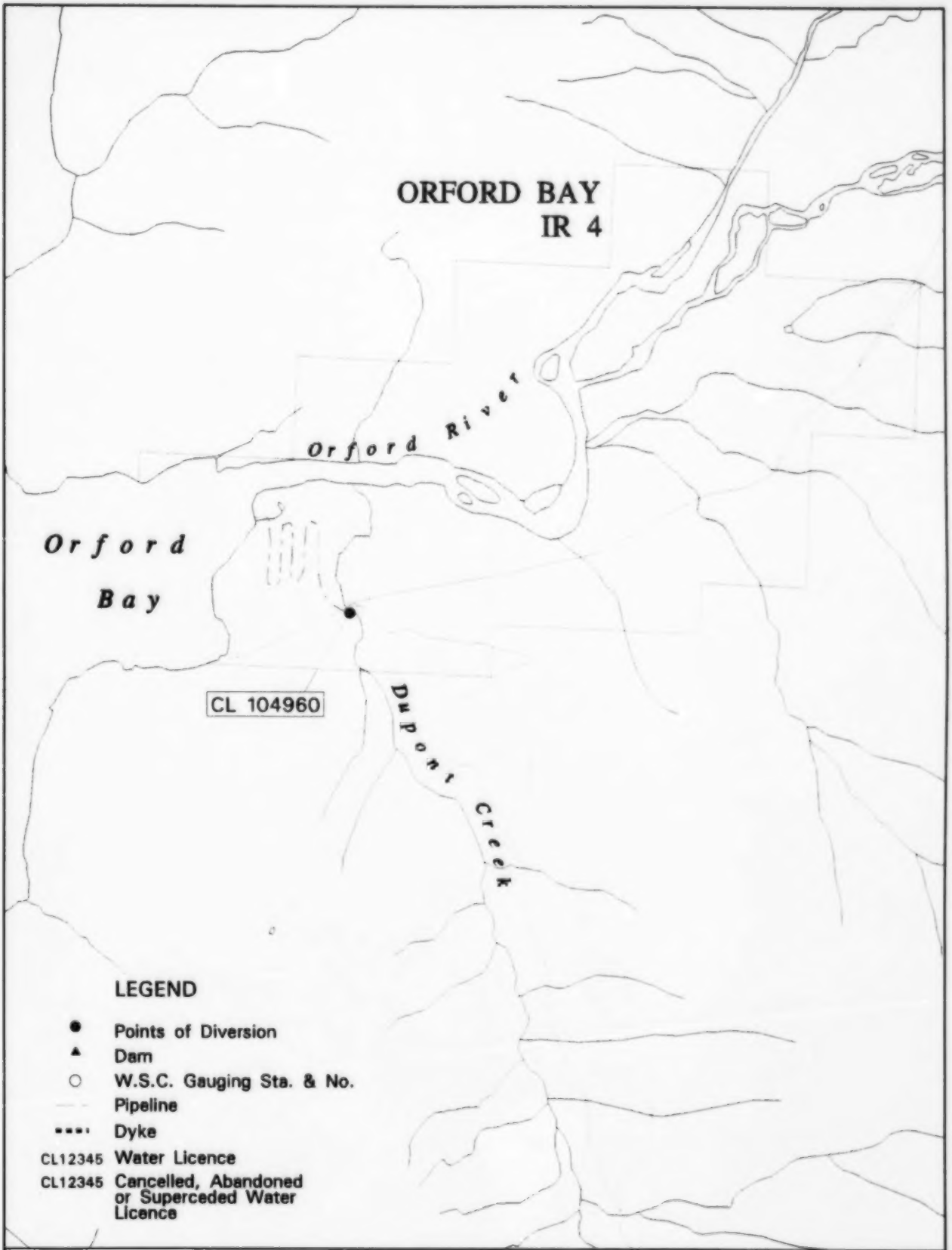
ATTACHMENT 4



Homalco

Scale 1:350,000

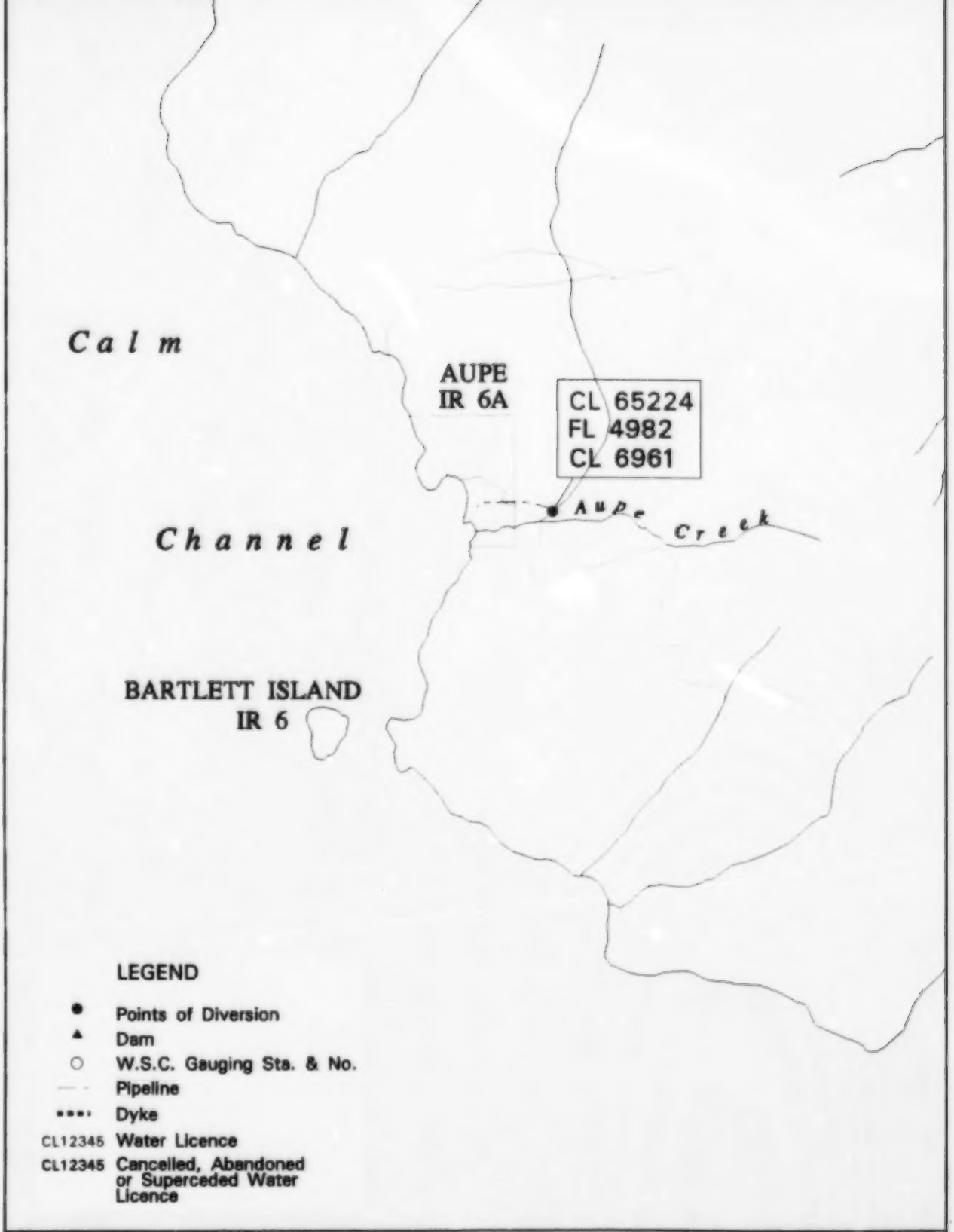
Ministry of Environment, Lands & Parks Date: September 10, 1997 Environment & Lands Division



Dupont Creek

Scale 1:20,000

Ministry of Environment, Lands & Parks Date: September 18, 1997 Environment & Lands Division



Aupe Creek

Scale 1:20,000

Ministry of Environment, Lands & Parks | Date: September 10, 1997 | Environment & Lands Division